

Todd M. Friedman (SBN 216752)
Adrian R. Bacon (SBN 280332)
Meghan E. George (SBN 274525)
Thomas E. Wheeler (SBN 308789)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.
21550 Oxnard St., Suite 780
Woodland Hills, CA 91367
Phone: 877-206-4741
Fax: 866-633-0228
tfriedman@toddflaw.com
abacon@toddflaw.com
mgeorge@toddflaw.com
twheeler@toddflaw.com
Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action individually and on behalf of all others similarly situated seeking damages and any other available legal or equitable remedies resulting from the illegal actions of Defendant, FLOODLOCAL.COM (“Defendant”), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 *et seq.* (“TCPA”), thereby causing Plaintiff to incur unwanted and unnecessary charges and invading Plaintiff’s privacy.

JURISDICTION & VENUE

2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a California corporation with its principle place of business also in California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a Nevada company. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

3. Venue is proper in the United States District Court for the Central District of California pursuant to 28 U.S.C. § 1391(b)(2) because Defendant does business within the State of California and Plaintiff resides within the County of Alameda.

PARTIES

4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), is a rooting and plumbing business in Emeryville, California and is a “person” as defined by *47 U.S.C. § 153* (39).

5. Defendant, 411 LOCALS (“Defendant”), is a flood prevention and damage servicer, and is a “person” as defined by *47 U.S.C. § 153* (39).

6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.

7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

FACTUAL ALLEGATIONS

8. Beginning in or around February of 2016 and continuing through March of 2016, Defendant contacted Plaintiff on Plaintiff's cellular telephone numbers ending in -3803 in an attempt to solicit Plaintiff to purchase Defendants' services.

9. Defendants contacted or attempted to contact Plaintiff from telephone numbers belonging to Defendants, including without limitation (725) 333-9706 and (720) 445-7324.

10. Defendants used an “automatic telephone dialing system” as defined by *47 U.S.C. § 227(a)(1)* to place its calls to Plaintiff seeking to solicit its services.

11. Furthermore, at one or more instance during these calls, Defendant utilized an “artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A).

12. Defendant's calls constituted calls that were not for emergency

1 purposes as defined by *47 U.S.C. § 227(b)(1)(A)*.

2 13. Defendant's calls were placed to telephone number assigned to a
3 cellular telephone service for which Plaintiff incurs a charge for incoming calls
4 pursuant to *47 U.S.C. § 227(b)(1)*.

5 14. Plaintiff is not a customer of Defendant's services and has never
6 provided any personal information, including his telephone number, to Defendant
7 for any purpose whatsoever.

8 15. During all relevant times, Defendant did not possess Plaintiff's "prior
9 express consent" to receive calls using an automatic telephone dialing system or an
10 artificial or prerecorded voice on its cellular telephones pursuant to *47 U.S.C. §*
11 *227(b)(1)(A)*.

12 16. Defendant placed multiple calls soliciting its business to Plaintiff on
13 its cellular telephones beginning in or around April of 2016 and continued until in
14 or around June of 2016.

15 17. Such calls constitute solicitation calls pursuant to *47 C.F.R. §*
16 *64.1200(c)(2)* as they were attempts to promote or sell Defendant's services.

17 18. Plaintiff received numerous solicitation calls from Defendant within a
18 12-month period.

19 19. Plaintiff requested for Defendant to stop calling Plaintiff during one
20 of the initial calls from Defendant, thus revoking any prior express consent that had
21 existed and terminating any established business relationship that had existed, as
22 defined under *16 C.F.R. 310.4(b)(1)(iii)(B)*.

23 20. Upon information and belief, and based on Plaintiff's experiences of
24 being called by Defendant after requesting they stop calling, and at all relevant
25 times, Defendant failed to establish and implement reasonable practices and
26 procedures to effectively prevent telephone solicitations in violation of the
27 regulations prescribed under *47 U.S.C. § 227(c)(5)*.

CLASS ALLEGATIONS

21. Plaintiff brings this action individually and on behalf of all others similarly situated, as a member the two proposed classes (hereafter, jointly, "The Classes"). The class concerning the ATDS claim for no prior express consent (hereafter "The ATDS Class") is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

22. The class concerning the ATDS claim for revocation of consent, to the extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined as follows:

All persons within the United States who received any solicitation/telemarketing telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had revoked any prior express consent to receive such calls prior to the calls within the four years prior to the filing of this Complaint.

23. Plaintiff represents, and is a member of, The ATDS Class, consisting of all persons within the United States who received any solicitation telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.

1 24. Plaintiff represents, and is a member of, The ATDS Revocation Class,
2 consisting of all persons within the United States who received any
3 solicitation/telemarketing telephone calls from Defendant to said person's cellular
4 telephone made through the use of any automatic telephone dialing system or an
5 artificial or prerecorded voice and such person had revoked any prior express
6 consent to receive such calls prior to the calls within the four years prior to the
7 filing of this Complaint.

8 25. Defendant, their employees and agents are excluded from The
9 Classes. Plaintiff does not know the number of members in The Classes, but
10 believes the Classes members number in the thousands, if not more. Thus, this
11 matter should be certified as a Class Action to assist in the expeditious litigation of
12 the matter.

13 26. The Classes are so numerous that the individual joinder of all of its
14 members is impractical. While the exact number and identities of The Classes
15 members are unknown to Plaintiff at this time and can only be ascertained through
16 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
17 The Classes includes thousands of members. Plaintiff alleges that The Classes
18 members may be ascertained by the records maintained by Defendant.

19 27. Plaintiff and members of The ATDS Class and The ATDS Revocation
20 Class were harmed by the acts of Defendant in at least the following ways:
21 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
22 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
23 members to incur certain charges or reduced telephone time for which Plaintiff and
24 ATDS Class and ATDS Revocation Class members had previously paid by having
25 to retrieve or administer messages left by Defendant during those illegal calls, and
26 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
27 members.

28 28. Common questions of fact and law exist as to all members of The

1 ATDS Class which predominate over any questions affecting only individual
2 members of The ATDS Class. These common legal and factual questions, which
3 do not vary between ATDS Class members, and which may be determined without
4 reference to the individual circumstances of any ATDS Class members, include,
5 but are not limited to, the following:

- 6 a. Whether, within the four years prior to the filing of this
7 Complaint, Defendant made any telemarketing/solicitation call
8 (other than a call made for emergency purposes or made with
9 the prior express consent of the called party) to a ATDS Class
10 member using any automatic telephone dialing system or any
11 artificial or prerecorded voice to any telephone number
12 assigned to a cellular telephone service;
- 13 b. Whether Plaintiff and the ATDS Class members were damaged
14 thereby, and the extent of damages for such violation; and
- 15 c. Whether Defendant and their agents should be enjoined from
16 engaging in such conduct in the future.

17 29. As a person that received numerous telemarketing/solicitation calls
18 from Defendant using an automatic telephone dialing system or an artificial or
19 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
20 claims that are typical of The ATDS Class.

21 30. Common questions of fact and law exist as to all members of The
22 ATDS Revocation Class which predominate over any questions affecting only
23 individual members of The ATDS Revocation Class. These common legal and
24 factual questions, which do not vary between ATDS Revocation Class members,
25 and which may be determined without reference to the individual circumstances of
26 any ATDS Revocation Class members, include, but are not limited to, the
27 following:

- 28 a. Whether, within the four years prior to the filing of this

Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;

- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

31. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

32. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

33. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same

complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

34. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

35. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

36. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendant' negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

39. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

11

1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227(b)**

5 **On Behalf of the ATDS Class and the ATDS Revocation Class**

6 40. Plaintiff repeats and incorporates by reference into this cause of action
7 the allegations set forth above at Paragraphs 1-35.

8 41. The foregoing acts and omissions of Defendant constitute numerous
9 and multiple knowing and/or willful violations of the TCPA, including but not
10 limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*,
11 and in particular *47 U.S.C. § 227 (b)(1)(A)*.

12 42. As a result of Defendant' knowing and/or willful violations of *47
13 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class
14 members are entitled an award of \$1,500.00 in statutory damages, for each and
15 every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

16 43. Plaintiff and the Class members are also entitled to and seek injunctive
17 relief prohibiting such conduct in the future.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff requests judgment against Defendant for the following:

20 **FIRST CAUSE OF ACTION**

21 **Negligent Violations of the Telephone Consumer Protection Act**

22 **47 U.S.C. §227(b)**

23 • As a result of Defendant' negligent violations of *47 U.S.C.
24 §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation
25 Class members are entitled to and request \$500 in statutory damages,
26 for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
27 • Any and all other relief that the Court deems just and proper.

1 **SECOND CAUSE OF ACTION**

2 **Knowing and/or Willful Violations of the Telephone Consumer Protection
3 Act**

4 **47 U.S.C. §227(b)**

5 • As a result of Defendant' willful and/or knowing violations of 47
6 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS
7 Revocation Class members are entitled to and request treble damages,
8 as provided by statute, up to \$1,500, for each and every violation,
9 pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).

10 • Any and all other relief that the Court deems just and proper.

11 **JURY DEMAND**

12 44. Pursuant to the Seventh Amendment to the Constitution of the United
13 States of America, Plaintiff is entitled to, and demands, a trial by jury.

14 Respectfully Submitted this 21st Day of July, 2017.

15 LAW OFFICES OF TODD M. FRIEDMAN, P.C.

16
17 By: /s/ Todd M. Friedman
18 Todd M. Friedman
19 Law Offices of Todd M. Friedman
20 Attorney for Plaintiff